

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CARLOS RUBEN RODRIGUEZ,

Plaintiff,

COMPLAINT

-against-

Civ. No.

**THE CITY OF NEW YORK, POLICE OFFICER
AKIM PRICE & JOHN DOE POLICE
OFFICERS #1-5,**

**PLAINTIFF DEMANDS
A TRIAL BY JURY**

Defendants.

----- X

Plaintiff, by his attorneys, GIORDANO LAW OFFICES, PLLC, complaining of
Defendants respectfully alleges, upon information and belief:

PRELIMINARY STATEMENT

1. Plaintiff brings this action pursuant to 42 U.S.C. §1983 *et. seq.* for an incident of police misconduct and deprivation of protected rights, including those rights under the Fourth and Fourteenth Amendments to the U.S. Constitution, that transpired on or about July 9, 2012 when police officers employed by the CITY OF NEW YORK used excessive force, assaulted, battered, wrongfully detained, arrested and falsely imprisoned Plaintiff CARLOS RUBEN RODRIGUEZ and further maliciously prosecuted Plaintiff in Bronx County, New York.

2. On or about July 9, 2012 at approximately 9:45 p.m., Plaintiff was standing in front of or near his apartment building located at 2334 Creston Avenue, Bronx County, New York with his six-year-old son. He observed Defendants JOHN DOE POLICE OFFICERS #1-5 conducting a traffic stop on the side of the road. Plaintiff recognized the man that was pulled over as a friend of his and asked the friend if he wanted Plaintiff to call someone for him. Defendant JOHN DOE POLICE OFFICER #1 began yelling profanities at Plaintiff and without

probable cause or justification, Defendant JOHN DOE POLICE OFFICER #1 violently grabbed Plaintiff and threw him against a wall, injuring Plaintiff's left shoulder.

3. Defendants POLICE OFFICER AKIM PRICE (hereinafter "PRICE") & JOHN DOE POLICE OFFICERS #1-5, without probable cause or justification, unlawfully arrested and searched Plaintiff.

4. Defendants JOHN DOE POLICE OFFICERS #1-5 then caused a criminal charge to be filed against Plaintiff in Bronx County for False Personation, Docket #2012BX039538, and continued prosecution upon such charge until such charge was ultimately dismissed in Plaintiff's favor.

5. As a result of Defendants' actions, Plaintiff was wrongfully imprisoned for over 24 hours, causing Plaintiff physical and emotional distress, humiliation, and embarrassment.

6. Furthermore, as a result of Defendants' actions, the mother of Plaintiff's six-year-old son has refused to allow Plaintiff's son to visit him since this incident occurred. Plaintiff also has been unable to work at his job as a barber since the incident as a result of the injury to his left shoulder.

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 in that this action arises under 42 U.S.C. §1983, and the First, Fourth, and Fourteenth amendments to the United States Constitution. This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 and the doctrine of pendent jurisdiction, since the state claims arise from the same operative facts and are part of the same case or controversy.

8. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §1391(b) and (c) because Defendant the CITY OF NEW YORK resides in the District. Additionally, all Defendants are subject to personal jurisdiction in this District.

9. Prior to the commencement of this action, and within ninety days after the claim arose, Plaintiff caused a Notice of Claim in writing to be served upon the Defendant THE CITY OF NEW YORK on September 18, 2012, by delivering to and leaving the same with the New York City Comptroller's Office, in like manner as the service of a summons in the District Court, which said Notice of Claim set forth the name and post office address of the Plaintiff and his attorney, the nature of, time when, place where, and manner in which the claims arose, and the items of damage and/or injuries claimed, or that might have been sustained, so far as it was practicable.

10. Over thirty days have elapsed since the service of such Notice of Claim and Defendant THE CITY OF NEW YORK has failed to settle or adjust this matter.

11. This action was commenced within one year and ninety days after the cause of action herein accrued.

THE PARTIES.

12. At all relevant times, Plaintiff is and was a resident of Bronx County, New York.

13. At all times relevant hereto, Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 acted in their official capacities, and were employees, agents, or servants of the defendants THE CITY OF NEW YORK, acting under color of state law, within the meaning of 42 U.S.C. § 1983.

14. Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 are employees acting within the scope of their employment as officers of the New York City Police Department.

15. THE CITY OF NEW YORK was and is a municipal corporation organized and existing under and pursuant to the laws of the State of New York. At all relevant times, Defendant THE CITY OF NEW YORK acted through its employees, agents and/or servants, including the individually named Defendants herein, who at all relevant times acted within the course and scope of their employment.

AS AND FOR A FIRST CLAIM PURUSANT TO 42 U.S.C. § 1983 BY PLAINTIFF

AGAINST DEFENDANTS PRICE JOHN DOE POLICE OFFICERS #1-5

16. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

17. Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested and imprisoned Plaintiff. Defendants physically and forcibly detained and handcuffed Plaintiff, held him under arrest.

18. As a result of the foregoing, Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.*, deprived Plaintiff of rights secured by the Constitution and laws of the United States, including those rights protected by the Fourth and Fourteenth Amendments, her right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

19. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional and psychological pain and was otherwise injured.

20. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 and is

further seeking punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A SECOND CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF

AGAINST DEFENDANTS PRICE AND JOHN DOE POLICE OFFICERS #1-5

21. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if more fully set forth herein.

22. Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5, acting intentionally, maliciously and without justification or probable cause, caused criminal charges to be filed against Plaintiff for False Personation, which were ultimately dismissed by the Bronx County Criminal Court.

23. As a result of the foregoing, Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq.*, and deprived Plaintiff of rights secured by the Constitutions and laws of the United States and the State of New York including those rights protected by the Fourth and Fourteenth Amendments, his right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitution of the United States and the State of New York.

24. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, and was otherwise injured.

25. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 and is

further seeking punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A THIRD CLAIM PURSUANT TO 42 U.S.C. § 1983 BY PLAINTIFF

AGAINST DEFENDANTS PRICE AND JOHN DOE POLICE OFFICERS #1-5

26. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

27. On or about July 9, 2012, Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5, acting intentionally, recklessly and/or with a deliberate indifference to the rights, life and liberty of Plaintiff, assaulted, battered and caused physical and mental injuries to Plaintiff.

28. As a result of the foregoing, Defendants, acting under color of state law, violated 42 U.S.C. § 1983 *et. seq*, and deprived Plaintiff of rights secured by the Constitution and laws of the United States and the State of New York including those rights protected by the Fourth and Fourteenth Amendments to the U.S. Constitution, their right not to be deprived of life, liberty and property without due process of law, and other rights, privileges and immunities guaranteed by the laws and Constitutions of the United States and the State of New York.

29. As a result of the foregoing, Plaintiff was caused to suffer bodily injury, loss of liberty, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

30. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against Defendants JOHN DOE POLICE OFFICERS #1-5 and is further seeking punitive damages against Defendants JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A FOURTH CLAIM OF FALSE ARREST AGAINST ALL DEFENDANTS

31. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

32. On or about July 9, 2012, Defendants, acting without probable cause, intentionally, without justification and with deliberate indifference to the rights, life and liberty of Plaintiff, falsely arrested and imprisoned Plaintiff.

33. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, loss of liberty and life, substantial physical, emotional, mental and psychological pain, lost time from his employment as a result thereof, and was otherwise injured.

34. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against all Defendants and is further seeking punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A FIFTH CLAIM OF MALICIOUS PROSECUTION

AGAINST ALL DEFENDANTS

35. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

36. Defendants, acting intentionally, maliciously and without justification or probable cause, caused to be filed an accusatory instrument or otherwise brought criminal charges against Plaintiff who was criminally prosecuted therefore until such prosecution was terminated in his favor on or about September 5, 2012.

37. As a result of the foregoing, Plaintiff was caused to suffer loss of liberty and life, substantial emotional, mental and psychological pain, lost time from his employment and was otherwise injured.

38. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against all Defendants and is further seeking punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A SIXTH CLAIM FOR ASSAULT AND BATTERY

AGAINST ALL DEFENDANTS

39. Plaintiff repeats and realleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

40. On or about July 9, 2012, Defendants intentionally placed Plaintiff in apprehension of imminent harmful contact, and Defendants, in a hostile manner, and without the consent of Plaintiff, intentionally caused harmful bodily contact with Plaintiff as described herein.

41. As a result of the foregoing, Plaintiff was caused to suffer bodily harm, substantial physical, emotional, mental and psychological pain, and was otherwise injured.

42. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ demands monetary damages against all Defendants and is further seeking punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5 in an amount to be determined by jury.

AS AND FOR A SEVENTH CLAIM OF NEGLIGENT HIRING AND TRAINING

AGAINST DEFENDANT THE CITY OF NEW YORK

43. Plaintiff repeats and reiterates each and every allegation contained in the preceding paragraphs as if fully set forth herein.

44. The aforementioned occurrence took place by reason of the negligence of Defendant the CITY OF NEW YORK, its agents, servants and/or employees, including various police officers regarding the hiring, retention, supervision and disciplining of the Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5.

45. As a result of the foregoing, Plaintiff CARLOS RUBEN RODRIGUEZ sustained severe and serious personal injuries and other consequential damages.

46. As a result of the foregoing, Plaintiff demands monetary damages against Defendant THE CITY OF NEW YORK in an amount to be determined by a jury.

WHEREFORE, Plaintiff demands the following relief jointly and severally against all of the Defendants:

- a. Compensatory damages;
- b. Punitive damages against Defendants PRICE and JOHN DOE POLICE OFFICERS #1-5;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
March 6, 2013

Yours, etc.,

Giordano Law Offices
Attorney for Plaintiff

By: _____
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